

Residential Tenancies Tribunal

Application 2023-0301-NL

Decision 23-0301-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:13 a.m. on 16-May-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone as no phone number was given and the landlord did not have it. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, on 18-April-2023 personally at the residential premises. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord states that there was a written fixed rental agreement in 2016 which is now a month to month tenancy (LL#2). The tenant moved into the unit in December 2016 and rent is \$895.00 per month due on the first of each month. The landlord states that a security deposit of \$596.25 was paid in November 2016 and is still in the company’s possession.
6. The landlord amended the application to increase outstanding rent from \$2685.00 as per application to \$2420.00 to include the month of May less payments that were made in April. The landlord is also seeking hearing expenses reimbursed.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent \$2420.00
 - b. Late fees \$75.00
 - c. Security deposit applied against monies owed
 - d. Vacant possession of rental premises
 - e. Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19: Notice where failure to pay rent, Section 15: Fee for failure to pay rent and Section 14: Security Deposit.

Issue 1: Rent \$2420.00

Relevant Submissions

10. The landlord submitted a written rental ledger (LL#3) as follows:

12/23/2022	12/2022	R-448843	chk# M/O -	0.00	0.00	0.00	0.00	880.00	0.00
1/1/2023	1/2023	C-521502	rentres - Residential rent	895.00	0.00	0.00	895.00	0.00	895.00
2/1/2023	2/2023	C-525920	rentres - Residential rent	895.00	0.00	0.00	895.00	0.00	1,790.00
2/5/2023	2/2023	C-526171	late - Late Fees	75.00	0.00	0.00	75.00	0.00	1,865.00
2/5/2023	2/2023	R-451265	chk# M/O -	0.00	0.00	0.00	0.00	970.00	895.00
3/1/2023	3/2023	C-528760	rentres - Residential rent	895.00	0.00	0.00	895.00	0.00	1,790.00
4/1/2023	4/2023	C-532601	rentres - Residential rent	895.00	0.00	0.00	895.00	0.00	2,685.00

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord amended the above ledger and stated that there is rental arrears in the amount of \$2420.00 (including late fees) once outstanding rent for the month of May is added less payments received in April in the amount of \$1130.00. A landlord's termination notice with cause was given to the tenant on 21-March-2023 under section 19; failure to pay rent with a termination date of 3-April-2023 (LL#4). The landlord confirmed that the notice was given in person at the residential premises on 21-March-2023. This is a good notice.
12. The rental ledger is amended to show a daily rate for May as this tribunal doesn't consider future rent (see below). I find that the tenant is responsible for outstanding rent dating back as far as 1-January-2023 (last zero balance) to 30-April-2023 in the amount of \$1450.00 and rent from 1-May to 16-May in the amount of \$470.72 for a total of \$1920.72 and then a daily rate shall apply as calculated below:

December 23, 2022		Balance	0.00
January 1, 2023	Rent due	895.00	-895.00
February 1, 2023	Rent due	895.00	-1790.00
February 5, 2023	Payment	970.00	-820.00
March 1, 2023	Rent due	895.00	-1715.00
April 1, 2023	Rent due	895.00	-2610.00
April 1, 2023	Payment	800.00	-1810.00
April 17, 2023	Payment	360.00	-1450.00
May 1-16, 2023	Rent due	470.72	-1920.72

Daily rate: $\$895.00 \times 12 \text{ months} = \10740
 $\$10740 \text{ divided by } 365 \text{ days} = \29.42 per day

Decision

13. The landlord's claim for rental arrears succeeds in the amount of \$1920.72.

Issue 2: Late Fees \$75.00

14. The landlord is seeking late fees in the amount of \$75.00

Analysis

15. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

16. The maximum rate of \$75.00 is allowable

Issue # 3: Security deposit applied to monies owed \$596.25

Analysis

17. The landlord's claim for losses has been successful as per paragraph 13, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

Decision

18. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$596.25.

Issue # 4: Vacant possession of the Rented Premises

Relevant Submissions:

19. The landlord submitted a termination notice under Section 19: failure to pay rent. The notice is signed and dated for 21-March-2023, with a termination date of 3-April-2023 (LL#4).

Analysis

20. Section 19 of the *Residential Tenancies Act, 2018* states:

a. Notice where failure to pay rent

b. 19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

i. (b) where the residential premises is

(i) rented from *month to month*,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

c. the amount of rent payable by a tenant is *overdue for 5 days or more*, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

i. (4) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

21. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, 3-April-2023 the tenant was still in arrears. The termination notice meets the requirements of the *Act* and is a valid notice.

22. I find the tenant should have vacated the property by 3-April-2023.

Decision

23. The landlord's claim for an order for vacant possession succeeds.

24. The tenant shall vacate the premises immediately

25. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

26. As this tribunal does not consider future rent, the tenant shall pay a daily rate for rent beginning 17-May-2023 in the amount of \$29.42 a day as outlined in paragraph 12, until such time as the landlord regains possession of the property.

Issue # 5: Hearing Expenses

27. The landlord paid a fee of \$20.00 to file the application. As the landlord's claim has been successful, the tenant shall pay the \$20.00 fee. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

28. The tenant shall:

Pay the landlord \$1419.47 as follows:

Rent	\$1920.72
Late fees	75.00
Hearing expenses ...	20.00
Less: security deposit	(596.25)
Total	<u>\$1419.47</u>

29. Pay a daily rate of rent beginning 17-May-2023 of \$29.42, until such time as the landlord regains possession of the property.

30. Vacate the property immediately

31. Pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

32. The landlord will be awarded an Order of Possession.

May 19, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office